

1 **WO**

2

3

4

5

6

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

7

8

9 CWT Canada II, LP, an Ontario, Canada
10 Limited Partnership

No. CV16-0607 PHX DGC

11

Plaintiff,

ORDER

12

v.

13

Elizabeth J. Danzik, an individual, et al.,

14

Defendants.

15

16

17

18

19

The Court may set aside an entry of default if good cause is shown. Fed. R. Civ. P. 55(c). The Court considers (1) whether there was culpable conduct on the part of the defendant, (2) whether any meritorious defenses are available, and (3) whether there is any prejudice to the plaintiff. *TCI Group Life Insurance Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001).

20

21

22

23

“A defendant’s conduct is culpable if he has received actual or constructive notice of the filing of the action and intentionally failed to answer.” *Id.* at 697. In this case, Defendant Danzik sought counsel immediately after the default was entered and filed a motion to set it aside within 30 days. Docs. 22, 26, 33.

24

25

26

27

28

To establish that a meritorious defense exists, a defendant must allege specific facts that would constitute a defense. *Id.* at 700. The Court need not conclude that the defendant will prevail on the alleged defense to determine that this factor weighs in favor of setting aside default. *Apache Nitrogen Products, Inc. v. Harbor Insurance Co.*, 145 F.R.D. 674, 682 (D. Ariz. 1993). The Court finds Danzik’s explanation of her defense

1 sufficiently plausible to satisfy this requirement.

2 Prejudice concerns any adverse effects the plaintiff might suffer if the default is
3 set aside. Requiring Plaintiff to make its case on the merits rather than by default is not
4 the kind of prejudice that satisfies good cause.

5 After considering these factors, the Court will grant Defendant Elizabeth Danzik's
6 motion to set aside the Clerk's entry of default. Doc. 33.

7 There is still the matter of service of process to be addressed. The Court could
8 schedule a hearing and take testimony from various witnesses on the issues hotly
9 disputed in the parties' papers, but this appears unnecessary and wasteful. If Ms.
10 Danzik's counsel can simply accept service, a hearing will be unnecessary. If Ms.
11 Danzik declines to have her attorney accept service, the Court likely will proceed with an
12 evidentiary hearing, and may assess fees and costs if it concludes that one party or the
13 other sought to mislead the Court or multiply proceedings unnecessarily. Ms. Danzik's
14 counsel should file a notice by **October 12, 2016**, stating whether she agrees that he may
15 accept service on her behalf.

16 The Court will enter a ruling with respect to the motion for a default judgment
17 against Defendant Deja II, LLC in a separate order.

18 **IT IS ORDERED** that the motion to set aside default (Doc. 33) is **granted**.

19 Dated this 6th day of October, 2016.

20
21
22
23
24
25
26
27
28



29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
3310
3311
3312
3313
3314
3315
3316
3317
3318
3319
3320
3321
3322
3323
3324
3325
3326
3327
3328
3329
3330
3331
3332
3333
3334
3335
3336
3337
3338
3339
3340
3341
3342
3343
3344
3345
3346
3347
3348
3349
3350
3351
3352
3353
3354
3355
3356
3357
3358
3359
3360
3361
3362
3363
3364
3365
3366
3367
3368
3369
33610
33611
33612
33613
33614
33615
33616
33617
33618
33619
33620
33621
33622
33623
33624
33625
33626
33627
33628
33629
33630
33631
33632
33633
33634
33635
33636
33637
33638
33639
33640
33641
33642
33643
33644
33645
33646
33647
33648
33649
33650
33651
33652
33653
33654
33655
33656
33657
33658
33659
33660
33661
33662
33663
33664
33665
33666
33667
33668
33669
33670
33671
33672
33673
33674
33675
33676
33677
33678
33679
33680
33681
33682
33683
33684
33685
33686
33687
33688
33689
33690
33691
33692
33693
33694
33695
33696
33697
33698
33699
336100
336101
336102
336103
336104
336105
336106
336107
336108
336109
336110
336111
336112
336113
336114
336115
336116
336117
336118
336119
336120
336121
336122
336123
336124
336125
336126
336127
336128
336129
336130
336131
336132
336133
336134
336135
336136
336137
336138
336139
336140
336141
336142
336143
336144
336145
336146
336147
336148
336149
336150
336151
336152
336153
336154
336155
336156
336157
336158
336159
336160
336161
336162
336163
336164
336165
336166
336167
336168
336169
336170
336171
336172
336173
336174
336175
336176
336177
336178
336179
336180
336181
336182
336183
336184
336185
336186
336187
336188
336189
336190
336191
336192
336193
336194
336195
336196
336197
336198
336199
336200
336201
336202
336203
336204
336205
336206
336207
336208
336209
336210
336211
336212
336213
336214
336215
336216
336217
336218
336219
336220
336221
336222
336223
336224
336225
336226
336227
336228
336229
336230
336231
336232
336233
336234
336235
336236
336237
336238
336239
336240
336241
336242
336243
336244
336245
336246
336247
336248
336249
336250
336251
336252
336253
336254
336255
336256
336257
336258
336259
336260
336261
336262
336263
336264
336265
336266
336267
336268
336269
336270
336271
336272
336273
336274
336275
336276
336277
336278
336279
336280
336281
336282
336283
336284
336285
336286
336287
336288
336289
336290
336291
336292
336293
336294
336295
336296
336297
336298
336299
336300
336301
336302
336303
336304
336305
336306
336307
336308
336309
336310
336311
336312
336313
336314
336315
336316
336317
336318
336319
336320
336321
336322
336323
336324
336325
336326
336327
336328
336329
336330
336331
336332
336333
336334
336335
336336
336337
336338
336339
3363310
3363311
3363312
3363313
3363314
3363315
3363316
3363317
3363318
3363319
33633100
33633101
33633102
33633103
33633104
33633105
33633106
33633107
33633108
33633109
33633110
33633111
33633112
33633113
33633114
33633115
33633116
33633117
33633118
33633119
336331100
336331101
336331102
336331103
336331104
336331105
336331106
336331107
336331108
336331109
336331110
336331111
336331112
336331113
336331114
336331115
336331116
336331117
336331118
336331119
3363311100
3363311101
3363311102
3363311103
3363311104
3363311105
3363311106
3363311107
3363311108
3363311109
3363311110
3363311111
3363311112
3363311113
3363311114
3363311115
3363311116
3363311117
3363311118
3363311119
33633111100
33633111101
33633111102
33633111103
33633111104
33633111105
33633111106
33633111107
33633111108
33633111109
33633111110
33633111111
33633111112
33633111113
33633111114
33633111115
33633111116
33633111117
33633111118
33633111119
336331111100
336331111101
336331111102
336331111103
336331111104
336331111105
336331111106
336331111107
336331111108
336331111109
336331111110
336331111111
336331111112
336331111113
336331111114
336331111115
336331111116
336331111117
336331111118
336331111119
3363311111100
3363311111101
3363311111102
3363311111103
3363311111104
3363311111105
3363311111106
3363311111107
3363311111108
3363311111109
3363311111110
3363311111111
3363311111112
3363311111113
3363311111114
3363311111115
3363311111116
3363311111117
3363311111118
3363311111119
33633111111100
33633111111101
33633111111102
33633111111103
33633111111104
33633111111105
33633111111106
33633111111107
33633111111108
33633111111109
33633111111110
33633111111111
33633111111112
33633111111113
33633111111114
33633111111115
33633111111116
33633111111117
33633111111118
33633111111119
336331111111100
336331111111101
336331111111102
336331111111103
336331111111104
336331111111105
336331111111106
336331111111107
336331111111108
336331111111109
336331111111110
336331111111111
336331111111112
336331111111113
336331111111114
336331111111115
336331111111116
336331111111117
336331111111118
336331111111119
3363311111111100
3363311111111101
3363311111111102
3363311111111103
3363311111111104
3363311111111105
3363311111111106
3363311111111107
3363311111111108
3363311111111109
3363311111111110
3363311111111111
3363311111111112
3363311111111113
3363311111111114
3363311111111115
3363311111111116
3363311111111117
3363311111111118
3363311111111119
33633111111111100
33633111111111101
33633111111111102
33633111111111103
33633111111111104
33633111111111105
33633111111111106
33633111111111107
33633111111111108
33633111111111109
33633111111111110
33633111111111111
33633111111111112
33633111111111113
33633111111111114
33633111111111115
33633111111111116
33633111111111117
33633111111111118
33633111111111119
336331111111111100
336331111111111101
336331111111111102
336331111111111103
336331111111111104
336331111111111105
336331111111111106
336331111111111107
336331111111111108
336331111111111109
336331111111111110
336331111111111111
336331111111111112
336331111111111113
336331111111111114
336331111111111115
336331111111111116
336331111111111117
336331111111111118
336331111111111119
3363311111111111100
3363311111111111101
3363311111111111102
3363311111111111103
3363311111111111104
3363311111111111105
3363311111111111106
3363311111111111107
3363311111111111108
3363311111111111109
3363311111111111110
3363311111111111111
3363311111111111112
3363311111111111113
3363311111111111114
3363311111111111115
3363311111111111116
3363311111111111117
3363311111111111118
3363311111111111119
33633111111111111100
33633111111111111101
33633111111111111102
33633111111111111103
33633111111111111104
33633111111111111105
33633111111111111106
33633111111111111107
33633111111111111108
33633111111111111109
33633111111111111110
33633111111111111111
33633111111111111112
33633111111111111113
33633111111111111114
33633111111111111115
33633111111111111116
33633111111111111117
33633111111111111118
33633111111111111119
336331111111111111100
336331111111111111101
336331111111111111102
336331111111111111103
336331111111111111104
336331111111111111105
336331111111111111106
336331111111111111107
336331111111111111108
336331111111111111109
336331111111111111110
336331111111111111111
336331111111111111112
336331111111111111113
336331111111111111114
336331111111111111115
336331111111111111116
336331111111111111117
336331111111111111118
336331111111111111119
3363311111111111111100
3363311111111111111101
3363311111111111111102
3363311111111111111103
3363311111111111111104
3363311111111111111105
3363311111111111111106
3363311111111111111107
3363311111111111111108
3363311111111111111109
3363311111111111111110
3363311111111111111111
3363311111111111111112
3363311111111111111113
3363311111111111111114
3363311111111111111115
3363311111111111111116
3363311111111111111117
3363311111111111111118
3363311111111111111119
33633111111111111111100
33633111111111111111101
33633111111111111111102
33633111111111111111103
33633111111111111111104
33633111111111111111105
33633111111111111111106
33633111111111111111107
33633111111111111111108
33633111111111111111109
33633111111111111111110
33633111111111111111111
33633111111111111111112
33633111111111111111113
33633111111111111111114
33633111111111111111115
33633111111111111111116
33633111111111111111117
33633111111111111111118
33633111111111111111119
336331111111111111111100
336331111111111111111101
336331111111111111111102
336331111111111111111103
336331111111111111111104
336331111111111111111105
336331111111111111111106
336331111111111111111107
336331111111111111111108
336331111111111111111109
336331111111111111111110
336331111111111111111111
336331111111111111111112
336331111111111111111113
336331111111111111111114
336331111111111111111115
336331111111111111111116
336331111111111111111117
336331111111111111111118
336331111111111111111119
336